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ERMOLINSKY ANDREY G  
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OFFICE OF PETITIONS

In re Application of :  
Oleg Vyacheslavovich Gritskevich et al :  
Application No. 10/069,271 :  
Filed: February 25, 2002 :  
For: METHOD FOR THE PRODUCTION OF :  
ELECTRIC ENERGY AND MHD GENERATOR :  
THEREFOR :

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed March 9, 2005, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." Petitioner is advised that this is **not** a final agency action decision.

The above-identified application became abandoned for failure to reply in a timely manner to the Notice of Fee Deficiency (Notice) mailed June 29, 2004. The Notice set a period for reply of one (1) month or thirty (30) days (whichever is later) from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on July 30, 2004.

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by: (1) the required reply (unless previously filed), which may met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute, but must be the payment of the issue fee or

any outstanding balance thereof in an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)).

The petition met all the requirements. However, the petition is not grantable since applicant has failed to provide evidence that the other inventor is deceased.

MPEP Section 409.01 states in part:

When a joint inventor of a *pro se* application dies after filing the application, the living joint inventor(s) must submit proof that the other joint inventor is dead. Upon submission of such proof, only the signatures of the living joint inventors are required on the papers filed with the USPTO if the legal representative of the deceased inventor does not intervene. If the legal representative of the deceased inventor wishes to intervene, the legal representative must submit an oath or declaration in compliance with 37 CFR 1.63 and 1.64 (e.g., stating that he or she is the legal representative of the deceased inventor and his or her residence, citizenship and post office address). Once the legal representative of the deceased inventor intervenes in the *pro se* application, the signatures of the living joint inventors and the legal representative are required on the papers filed with the USPTO.

Further correspondence with respect to this matter should be addressed as follows:

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An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Accordingly, since the \$1,875 extension of time submitted with the petition on March 9, 2005 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's Credit Card.

Telephone inquiries concerning this decision should be directed to Wan Laymon at (571) 272-3220.

Handwritten signature of Wan Laymon in black ink.

Wan Laymon

Petitions Examiner

Office of Petitions

Office of the Deputy Commissioner  
for Patent Examination Policy